

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Real Estate
Salesperson's License Application of
Julius R. Harris

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson on August 2, 2007, at 2:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of the Applicant, Julius R. Harris, 466 West Central, St. Paul, MN 55103. The OAH record closed on August 2, 2007.

STATEMENT OF ISSUE

The issue presented in this case is whether the Applicant should be denied a real estate salesperson's license because his 1996 conviction in Ramsey County District Court of first-degree attempted aggravated robbery (a felony), and his current probationary status demonstrate that he is untrustworthy and unqualified for licensure in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) and 82.35, subd. 1(b)?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

The Department served the Order Denying License Application, Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges initiating this contested case proceeding on the Applicant, Julius R. Harris, via first class mail on June 26, 2007, at his last known address on file with the Department: 466 West Central, St. Paul, MN 55103.^[1]

The Order Denying License Application, Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges set a prehearing conference for August 2, 2007, at 2:30 p.m.^[2]

The Order Denying License Application, Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges included the following notice:

The Applicant's failure to appear at the hearing may result in a finding that the Applicant is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed action may be upheld.^[3]

The envelope containing the Order Denying License Application, Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges was not returned to the Department as undeliverable. A letter regarding general information on hearing procedures sent to the Applicant by the Administrative Law Judge on July 5, 2007, was also not returned to the Office of Administrative Hearings as undeliverable.

The Applicant did not file any Notice of Appearance or make any request prior to the August 2, 2007, prehearing conference for a continuance or any other relief. No one appeared at the prehearing conference on August 2, 2007, on behalf of the Applicant.

Because the Applicant failed to appear at the prehearing conference in this matter, he is in default.

Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Order Denying License Application, Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 82.35.

2. The Applicant was given timely and proper notice of the Prehearing Conference in this matter.

3. Minn. Stat. § 45.016 authorizes the Commissioner of Commerce to serve orders or other papers required or permitted to be issued relating to the duties and responsibilities entrusted to the Commissioner by several alternative methods, including "first class United States mail, including certified United States mail, or overnight express mail service, postage prepaid and addressed to the party at the party's last known address."

4. The Order Denying License Application, Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges issued by the Department was proper and the Department has fulfilled all relevant procedural requirements of law and rule.

5. Pursuant to Minn. Rules 1400.6000, a default occurs when a party "fails to appear without the prior consent of the judge at a prehearing conference, settlement conference, or a hearing or fails to comply with any interlocutory orders of the judge."

6. The Applicant, having made no appearance at the prehearing conference, and not requesting any continuance or relief, is in default. Pursuant to Minn. Rules part

1400.6000, the allegations contained in the Order Denying License Application, Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are hereby taken as true.

7. The Applicant's conviction in 1996 of first-degree attempted aggravated robbery (a felony), his conduct underlying that conviction, and his current probationary status demonstrate that he is untrustworthy and unqualified for licensure in violation of Minn. Stat. § §§ 45.027, subd. 7(a)(4) and 82.35, subd. 1(b).

8. This Order is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the application of Julius R. Harris for licensure as a real estate salesperson in the State of Minnesota be DENIED.

Dated: August 28, 2007

s/Barbara L. Neilson

BARBARA L. NEILSON

Administrative Law Judge

Reported: Default.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation set forth in this Report. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of the Commissioner of Commerce, 85 East Seventh Place, Suite 500, St. Paul, Minnesota 55101, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline

for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

^[1] Affidavit of Service by First Class Mail of Jean-Anne Gates attached to Order Denying License Application, Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges.

^[2] Order Denying License, Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges, p. 1.

^[3] *Id.* at p. 3, ¶ 1 of Additional Notice.